

**MANISTEE CITY PLANNING COMMISSION**

550 Maple Street  
Manistee, MI 49660

**MEETING MINUTES**

April 1, 2004

A meeting of the Manistee City Planning Commission was held on Thursday, April 1, 2004 at 7:00 p.m. in the Manistee Middle School Gym, 550 Maple Street, Manistee, Michigan.

**MEMBERS PRESENT:** Bob Davis, Greg Ferguson, Ray Fortier, Cyndy Fuller, Christa Johnson-Ross, David Kelley, Tony Slawinski and Roger Yoder

**MEMBERS ABSENT:** Mark Wittlief

**OTHERS:** Jon Rose (Community Development), Denise Blakeslee (Administrative Assistant), Jay Kilpatrick (Williams & Works), Brian Sousa (Wade Trim), John Gretzinger, (Nantz, Litowich, Smith & Girard), and others

Meeting was open at 7:00 p.m. by Chairman Yoder.

**PUBLIC HEARING:**

None

**APPROVAL OF MINUTES:**

Planning Commission Meeting of March 4, 2004

MOTION by Ray Fortier, seconded by Christa Johnson-Ross that the minutes of the March 4, 2004 Planning Commission meeting be approved.

Motion approved unanimously.

**NEW BUSINESS:**

None

## UNFINISHED BUSINESS:

### MANISTEE SALTWORKS DEVELOPMENT CORPORATION

#### Approval of Official Record for Manistee Saltworks Development Corporation request for a Special Use Permit

Motion by Ray Fortier seconded by Christa Johnson-Ross to approve Item #1 through #427 as the official Record for Manistee Saltworks Development Corporation request for a Special Use Permit.

Motion by Cyndy Fuller seconded by Bob Davis to amend the Motion to correct the dates on Item #117 from ½/04 to 01/2/04, correct the date on Item #119 from ½/04 to 01/2/04, correct the date on Item #158 from ½2/04 to 01/22/04 and the date on Item #159 from ½0/04 to 01/20/04.

Motion passed unanimously (copy of record Item #1 through #427 with corrections attached)

#### Further Discussion

Brian Sousa gave the Planning Commission a Memo dated 3/25/04 RE: Northern Lights Project - Estimated life of proposed haul-route roads. Mr. Sousa gave a brief summary of the report which estimated the live to be 10-15 years with proper maintenance.

Mr. Kilpatrick continued discussion with the Commissioners on the remaining standards of 8609 of the Ordinance. First was discussion on the health portion of 8604.1 which included EPA Standards, not proposing new technology using old technology (to change technology would require new application), discharge of water into Manistee Lake (could use system that would recycle cooling-water), alteration of shoreline and effects to the environment.

Members and consultants discussed a letter received from Manistee Saltworks Development Corporation attorney Roger Myers of Howard & Howard Attorneys, P.C. dated 3/25/04.

The Commissioners continued discussion of the standards of 8609 of the Ordinance. The discussion continued with Welfare and Compatibility with adjacent land uses. Discussion included Neighborhoods around the plant, cost of infrastructure maintenance, no Community Service Fee to support the community, burden of costs to be borne by the taxpayers of the community, Massive size of buildings, nuisance of coal dust, differences in calculations on reports, clarification on jobs did not answer questions, Mercury emissions, area Physicians opposed, wear and tear on infrastructure, Withdrawal of Community Service Fee, Memo from applicants attorney opposing proposed conditions, 1987 Land Use Plan, Proposed system -vs- fluidized bed technology.

This concluded the review of the standards of 8609 of the Ordinance.

Members of the Planning Commission and staff discussed the letter from Roger Myers in greater depth (attached). Discussion included the underlying assumption that the Planning Commission cannot view the entire project as a Special Use Permit. The letter indicates that the proposed conditions will be

challenged in court, the Community Service Fee. Members must weigh the good to the community -vs- the bad for the community, water controls -vs- air quality controls.

The applicant offered in writing a 14 day extension with a condition that was unacceptable to the City, The applicant then offered a 14 day extension in writing without any conditions, and at 5:00 p.m. on April 1, 2004 the applicant offered a verbal extension until May 6, 2004.

Jon Rose read a prepared Staff Report.

MOTION by Bob Davis, seconded by Cyndy Fuller to direct staff to prepare a resolution denying the issuance of a Special Use Permit Application for Manistee Salt Works Development Corporation.

A voice vote was called. With voting as follows:

Commissioner Davis	Yes
Commissioner Ferguson	No
Commissioner Fortier	Yes
Commissioner Fuller	Yes
Commissioner Johnson-Ross	Yes
Commissioner Kelley	Yes
Commissioner Slawinski	Yes
Commissioner Yoder	Yes

Motion passed 7 to 1

MOTION by Cyndy Fuller, seconded by Ray Fortier that a Special Meeting be called for April 15, 2004.

Motion passed unanimously.

Jay Kilpatrick asked that the members provide input on the basis of denial to be addressed in the resolution. Ensuing discussion included the following:

- Not Reasonable
- Height
- Air/Water Pollutuion
- Health, Safety, Welfare
- Service Fee
- Compatibility with adjacent land uses
- Discharge of water to lake/sewer
- No formal site plan only concept plan
- Decibel limits
- Bridges
- Coal Dust Control
- Off set-wear and tear on infrastructure/bridges
- Not using new/better technology

**OTHER COMMUNICATIONS:**

None

**CITIZEN QUESTIONS AND CONCERNS:**

Bill Dean, 282 Lighthouse Circle - spoke as a toxicologist and his concerns.

Duane Marquand, 2107 Red Apple Road - read a prepared statement (attached)

Shirley Skiera, 1307 24<sup>th</sup> Street - Thanked the Planning Commission for listening to citizens and spoke of mercury controls.

Bill Kracht, 403 First Street - Thanked the Planning Commission for time spent on project.

Daniel Behring, 3645 Lakeshore Road - Proud to be a part of what happened this past four months.

Tim Granger, 238 West Kott Road - Proud of process

Gerard Grabowski, 10040 Alkire Road - Spoke of the ability to defend the denial process.

Dana Schindler, 2005 Merkey Road - Wanted the record of the public hearing to reflect her comments as being neither pro or con.

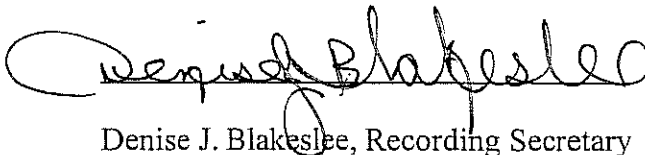
**WORK/STUDY SESSION:**

The April 15, 2004 Worksession has been changed to a Special Meeting which will be held at 7:00 p.m. in the Middle School Gym, 550 Maple Street.

**ADJOURNMENT:**

MOTION by Ray Fortier, seconded by Bob Davis that the meeting be adjourned. Motion passed unanimously. Meeting adjourned at 9:17 p.m.

MANISTEE PLANNING COMMISSION



Denise J. Blakeslee, Recording Secretary

**List of Items Submitted in Response to  
the application from Manistee Saltworks Development Corporation  
for a Special Use Permit for a Coal Fired Power Plant**

**All items are retained in binders in the  
Community Development Office  
City of Manistee**

<b>Item #</b>	<b>Description</b>	<b># Pages</b>	<b>x copied</b>
1	First Draft of Special Use Permit Application Mailed to Planning Commission for meeting on 10/2/03	20 pages	24
2	Agenda from Planning Commission meeting 10/2/03	1 page	50
3	Minutes from Planning Commission meeting 10/2/03	6 pages	26
4	Memo to Planning Commission Members dated 10/2/03	1 page	24
5	<i>Copy of Public Notice posted on 10/2/03</i>	<i>1 page</i>	<i>2</i>
6	Notes from Planning Commission Worksession 10/8/03	2 pages	26
7	Public Meeting Announcement (Tondu) - handout	1 page	24
8	Contact Information (Tondu) - handout	1 page	24
9	Memo to Planning Commission Members dated 10/10/03	1 page	24
10	Northern Lights Project Information - handout	24 pages	24
11	Agenda from Planning Commission Worksession 10/16/03	1 page	50
12	Notes from Planning Commission Worksession 10/16/03	4 pages	24
13	Hazardous Substances Reporting Form for Site Plan Review - handout during worksession	2 pages	24
14	<i>Copy of Public Notice Posting 10/21/03</i>	<i>1 page</i>	<i>2</i>
15	Memo to Planning Commission dated 10/21/03	1 page	24
16	Noise Levels in our Environment Fact Sheet	3 pages	24
17	Notes from Planning Commission Worksession 10/23/03	2 pages	26
18	Memo to Planning Commission dated 10/28/03	1 page	24
19	Fax from Frank Beaver, County Planner - Landfill Information	2 pages	24
20	Memo - Erickson Power Plant Tour	1 page	24

Item #	Description	# Pages	x copied
21	Lansing Board of Water and Light - Erikson Station	brochure	0
22	<i>Public Notice dated 10/23/03</i>	<i>1 page</i>	<i>2</i>
23	<i>Door Sign</i>	<i>1 page</i>	<i>2</i>
24	Memo to Planning Commission Members dated 10/31/03	1 page	24
25	Agenda Planning Commission Meeting of 11/6/03	1 page	50
26	Minutes Planning Commission Meeting of 11/6/03	4 pages	26
27	Memo from Jay Kilpatrick dated 10/29/03	4 pages	24
28	Letter from Steve Klein to Planning Commission With Attachments	21 pages	24
29	Special Use Permit Application	22 pages	24
30	Memo to Planning Commission Members dated 11/14/03	1 page	24
31	Memo from Jon Rose dated 11/14/03	1 page	24
32	Memo from Jay Kilpatrick dated 11/13/03	15 pages	24
33	Correspondence from Brian Sousa dated 11/12/03	4 pages	24
34	Memo from Sid Scrimger dated 11/7/03	1 page	24
35	Memo from Sid Scrimger dated 11/14/03	1 page	24
36	Memo from Jon Rose Attachment - Health Statistics	13 pages	24
37	Correspondence from Shirley Skiera With Attachments	18 pages	24
38	Correspondence from Charles Dumanois	1 page	24
39	Correspondence from Helen Ann Yunis	2 pages	24
40	Correspondence from Alan Marshall With Attachments	20 pages	24
41	Correspondence from Richard & Linda Albee	3 pages	24
42	<i>Door Sign</i>	<i>1 page</i>	<i>3</i>
43	Agenda Public Hearing/Special Meeting of the Planning Commission 11/20/03	2 pages	125

Item #	Description	# Pages	x copied
44	Handout - Response to Frequently Asked Questions Manistee Saltworks Development Corporation Coal Fired Power Plant	4 pages	125
45	Minutes from Public Hearing/Special Meeting 11/20/03	71 pages	26
46	Open Letter to the City of Manistee Planning Commission from Lee Sprague, Ogema, Little River Band of Ottawa Indians	8 pages	24
47	Correspondence from Steve Klein	1 page	24
48	Correspondence from Paul & Jan Gavlinski, William & Mary Kracht, Jane Reynolds, Shirley Galloway and Sharon Lapp	1 page	24
49	Correspondence from Robert Yates and Laura Horvat	1 page	24
50	Correspondence from Mark Sanford	1 page	24
51	Correspondence from Tom Kaminski, County Controller/Administrator	1 page	24
52	Correspondence from Ronald Schramski	1 page	24
53	Memo to Planning Commission dated 11/26/03	1 page	24
54	Attachment List	1 page	24
55	Memo from Jon Rose dated 11/26/03	1 page	24
56	Boat Traffic Information	4 pages	24
57	Questions from the Public Hearing/Special Meeting 11/20/03	1 page	24
58	Article - Siting Electricity Generation Facilities	5 pages	24
59	Correspondence from William & Martha Day	3 pages	24
60	Correspondence from Jim Nordlund Jr., Nordlund & Associates	2 pages	24
61	Correspondence from Judith Cunningham	1 page	24
62	Correspondence from Kristin Penzyl	1 page	24
63	Correspondence from M. Jo Miller	1 page	24
64	Correspondence from Jim Sluyter	2 pages	24
65	Fax/Correspondence from Frank J. Fahey	3 pages	24
66	Correspondence from Kurt Harvey	2 pages	24
67	Correspondence from Bob & Beth Polidan	3 pages	24

Item #	Description	# Pages	x copied
68	Correspondence from Dana Schindler	1 page	24
69	Correspondence from Mark Dougher	1 page	24
70	Correspondence from Nancy McCaslin	1 page	24
71	Correspondence from Jimmy Mitchell	1 page	24
72	Correspondence from Marty Holtgren	1 page	24
73	Correspondence from William & Martha Day	3 pages	24
74	Correspondence from Francis Johnston	1 page	24
75	Correspondence from Mark Knee	1 page	24
76	Correspondence from Mark Sanford	2 pages	24
77	Correspondence from William & Mary Kracht	1 page	24
78	Correspondence from April Saad	1 page	24
79	Correspondence from Helen Ann Yunis	1 page	24
80	Correspondence from Nate Suoboda	1 page	24
81	Correspondence from Jan Sapak	2 pages	24
82	Correspondence from Patricia Didion	1 page	24
83	Correspondence from Ellyn Niesen	1 page	24
84	Correspondence from Kurt Harvey	1 page	24
85	Correspondence from Shirley Skiera	1 page	24
86	Correspondence from Carol Pasco	1 page	24
87	Correspondence from Roberta Szpiet	1 page	24
88	Correspondence from Gerard Grabowski	4 pages	24
89	Correspondence from Bernard Ware Jr.	2 pages	24
90	Correspondence from Jan Shireman	1 page	24
91	Correspondence from Sandee Ware	1 page	24
92	Correspondence from Fred LaPoint	3 pages	24
93	Correspondence from Ned Atkins	1 page	24



Item #	Description	# Pages	x copied
94	Correspondence from Lee Sprague, Ogema, Little River Band of Ottawa Indians with attachment	5 pages	24
95	<i>Response letter from Jon Rose &amp; mailing list</i>	<i>3 pages</i>	33
96	<i>Copy of letter from Jon Rose &amp; Letter from Gerard Grabowski</i>	<i>2 pages</i>	2
97	Agenda from Planning Commission Meeting 12/4/03	2 pages	150
98	Page listing items forwarded to the City of Manistee Planning Commission at their meeting of 12/4/03	1 page	24
99	Answers to Questions asked during the Public Hearing 11/20/03 - Prepared by Jon Rose	2 pages	24
100	Response to questions from the Public Hearing, compiled by Jay Kilpatrick 11/30/03 - prepared by Tondou	3 pages	24
101	Memo from City Manager, Mitch Deisch	2 pages	24
102	Letter from Mayor Richard Mack to Lee Sprague, Ogema, Little River Band of Ottawa Indians	2 pages	24
103	Letter from Todd Harland, Manistee County Landfill	2 pages	24
104	Coal Fired Power Plants Truth Sheets - prepared by Tondou	8 pages	24
105	Response to Memo from Paul Gavilinski, Response to Memo from Charles Dumanois, Response to Memo from Richard and Linda Albee, Response to the Letter from Helen Ann Yunis, Response to the memo from Shirley Skiera - prepared by Tondou	10 pages	24
106	Memo from Meagan Kempf & Jim Tondou	4 pages	24
107	Correspondence from Dan Hornkohl	1 page	24
108	Correspondence from David R. Adams, Northwest Michigan Council of Government	1 page	24
109	Correspondence from John F. Caudell, NTH Consultants, Ltd	3 pages	24
110	<i>Door Sign</i>	<i>1 page</i>	5
111	Correspondence from Dorothy Kerr	1 page	24
112	Memo to Planning Commission dated 12/5/03	1 page	24
113	Minutes from Planning Commission Meeting 12/4/03	47 pages	26

Item #	Description	# Pages	x copied
114	Current Automotive Exhaust Along US 31 in Downtown Manistee Creates Air Concentrations similar to the Northern Lights Plant, Smoking is significantly more hazardous than living near a coal-fired power plant, There is not substantiated link between industrial emissions and disease rates in Manistee County - Handout from Tondu	3 pages	24
115	Tondu - Our response to Environmental Questions Received by the Planning Commission	6 pages	24
116	Correspondence from Yvonne & Pat Gorman	3 pages	24
117	Memo to Planning Commission dated 01/02/04	1 page	24
118	Agenda to Planning Commission Meeting 1/7/04	2 pages	200
119	List of Items Forwarded to Planning Commission 01/02/04	1 page	24
120	Memo from Jon Rose to Planning Commission RE: Conflicts of Interest, Letter from Mitch Deisch to Chris Bzdok, and Correspondence from Olson, Bzdok & Howard on behalf of the Citizens for Responsible Development/Conflicts of Interest	8 pages	24
121	Letter from R.J. Tondu to Planning Commission and Northern Lights Project Environmental Assessment	13 pages	24
122	Letter from Brian Sousa to Tondu Corporation RE: Environmental Assessment	2 pages	24
123	Letter from Mayor Mack to Lee Sprague, Ogema, Little River Band of Ottawa Indians	1 page	24
124	Correspondence from Dick Landback,	1 page	24
125	Correspondence from Daniel Behring	4 pages	24
126	Correspondence from Brown Township Board	1 page	24
127	Correspondence and Resolution from Manistee Conservation District	2 pages	24
128	Correspondence from Arlene Montgomery	2 pages	24
129	Correspondence and Resolution from Traverse Group of Sierra Club	2 pages	24
130	Correspondence from Pine River Chapter of Trout Unlimited	1 page	24
131	Correspondence from West Michigan Plumbers, Fitters and Service Trades Local Union No. 174	2 pages	24
132	Correspondence from Douglas Busch	1 page	24

Item #	Description	# Pages	x copied
133	Correspondence from Chippewa Ottawa Resource Authority	3 pages	24
134	Correspondence from Richard Anderson	2 pages	24
135	Correspondence from Patrick Guzikowski	1 page	24
136	Correspondence from Aaron Vankampen	1 page	24
137	Correspondence from Brett Hamilton	1 page	24
138	Correspondence from Timothy Colyer	1 page	24
139	Correspondence from Judy Colyer	1 page	24
140	Correspondence from James Andrews	1 page	24
<b>141</b>	<b><i>Response Letter mailed 1/6/04 and Mailing List</i></b>	<b>2 pages</b>	<b>12</b>
142	List of items forwarded to the Planning Commission 1/8/04	1 page	24
143	Memo from Mitch Deisch RE: Dr. Gunderson's questions/concerns	1 page	24
144	Correspondence from Robert Malhiot, Director, Portage Lake Environmental Association	1 page	24
145	E-mail from Charles Patten	1 page	24
146	Correspondence from Bill & Katy Ramsey with attachment	42 pages	24
147	Correspondence from Harless Feagins with attachment	3 pages	24
148	Correspondence from Tim Joseph, Manistee County Democratic Party	1 page	24
149	Minutes from Planning Commission Meeting 1/8/04	80 pages	26
<b>150</b>	<b><i>Response Letter Mailed 1/12/04 and Mailing List</i></b>	<b>2 pages</b>	<b>5</b>
151	Letter dated 1/15/04 from Jon Rose to Jim Tondu with fax verification sheets	7 pages	24
152	List of items forwarded to Planning Commission in their packets 1/16/04	1 pages	24
153	Correspondence from Carol Pasco	1 page	24
154	Resolution from Pleasanton Township	1 page	24
155	Correspondence from Mickey McCann	1 page	24
156	Letter dated 1/15/04 from Jon Rose to Jim Tondu	4 pages	24

Item #	Description	# Pages	x copied
157	Letter dated 1/15/04 from Mitch Deisch to Carol Pasco	1 page	24
158	List of items forwarded to Planning Commission at the 01/22/04 Worksession	1 page	24
159	Letter dated 01/20/04 from Mitch Deisch to Brian Sousa w/attachment	2 pages	24
160	Page 34 of report " <i>Mercury Falling</i> "	1 page	24
161	Correspondence from Steve Klein	1 page	24
162	Correspondence from Pat Didion	1 page	24
163	Correspondence from David Vavra	1 page	24
164	Correspondence from Daniel Behring	4 pages	24
165	Correspondence from Helen Ann Yunis	3 pages	24
166	Correspondence from Larry Lidroth	1 page	24
167	Correspondence from Christopher Bzdok, Olson Bzdok & Howard	6 pages	24
<b>168</b>	<b><i>Door Sign for Worksession 01/22/04</i></b>	<b><i>1 page</i></b>	<b><i>3</i></b>
169	Worksession Notes 01/22/04	2 pages	26
170	Memo to Planning Commission dated 1/29/04	1 page	24
171	Planning Commission Agenda 2/5/04	2 pages	200
172	List of Items mailed to Planning Commission 01/29/04	1 page	24
173	Memo from Jon Rose dated 01/27/04	1 page	24
174	Letter dated 01/22/04 from R.J. Tondu with attachments	11 pages	24
175	Memo from Jon Rose - Amendment to letter from R.J. Tondu dated 01/22/04	2 pages	24
176	Letter dated 01/26/04 from R.J. Tondu	5 pages	24
177	Letter dated 01/23/04 from Jon Rose to Matt Somsel with attachment	3 pages	24
178	Article "What is a Megawatt?"	2 pages	24
179	Resolution from Bear Lake Township	1 page	24
180	Correspondence from Pat Guzikowski	2 pages	24
181	Correspondence from Jay Kilpatrick, Williams & Works	1 page	24

Item #	Description	# Pages	x copied
182	<i>Response Letter (Conflict of Interest) &amp; mailing list mailed 2/1/04</i>	2 pages	6
183	List of Items distributed to the Planning Commission at their meeting of 2/5/04	1 page	24
184	Correspondence from John Gretzinger dated 2/2/04 RE: Planning Commission Member Potential Conflict of Interest	23 pages	24
185	Memorandum from Jay Kilpatrick dated 2/5/04 RE: Northern Lights Special Use and Site Plan Application Completeness	4 pages	24
186	Article submitted by the Little River Band of Ottawa Indians <i>"Evaluation of the Tondu Corporation Environmental Assessment for the Northern Lights Power Plant Project as Submitted to the City of Manistee Planning Commission on 12/17/2003"</i>	7 pages	24
187	Article submitted by the Little River Band of Ottawa Indians <i>"Alex J. Sagady &amp; Associates, Environmental Consultant to LRBOI RE: Tondu Environmental Assessment, Northern Lights Project"</i>	6 pages	24
188	Correspondence from Christopher Bzdok	3 pages	24
189	Correspondence from Tom Shea	1 page	24
190	Correspondence from Craig Grigonis	1 page	24
191	Correspondence from Sandee Ware	1 page	24
192	Correspondence from Daniel Behring	1 page	24
193	Correspondence from Audrea Dean	1 page	24
194	Correspondence from Nancy Behring	1 page	24
195	Correspondence from Pamela F. Smith	1 page	24
196	Correspondence from Ed Levandoski	1 page	24
197	Correspondence from Daniel Behring	4 pages	24
198	Correspondence from Christopher Bzdok	2 pages	24
199	Correspondence from Anne & George Kaminski	1 page	24
200	Correspondence from Nathan Svoboda	2 pages	24
201	Correspondence from Kathleen Hibbard	1 page	24
202	Resolution from Asthma Coalition of Northwest Michigan	1 page	24
203	Correspondence from Francis Johnston	1 page	24

Item #	Description	# Pages	x copied
204	<i>Response Letter Mailed 2/6/04 and Mailing List</i>	<i>2 pages</i>	<i>15</i>
205	Minutes from the 2/5/04 Planning Commission Meeting Minutes	231 pages	26
206	<i>Public Hearing Paperwork (affidavit, letter, mailing list, notices, affidavit)</i>	<i>13 pages</i>	<i>1</i>
207	Memo to Planning Commission dated 2/13/04	1 page	24
208	Public Hearing/Worksession Agenda 2/13/04	1 page	24
209	List of items forwarded to Planning Commission in their packets mailed 2/13/04	1 page	24
210	Memo to Planning Commission Members dated 2/13/04 from Jon Rose w/attachment Category S Baseline Environmental Assessment	372 pages	18
211	Correspondence from Judy Girard	2 pages	24
212	e-mail from Daniel Behring w/attachments	3 pages	24
213	e-mail from Daniel Behring w/attachments	5 pages	24
214	e-mail from Daniel Behring w/attachments	4 pages	24
215	Correspondence from Donald Jankwietz	2 pages	24
216	Correspondence from Donald Chartier	1 page	24
217	Correspondence from Richard & Linda Albee	2 pages	24
218	List of Items forwarded to Planning Commission at the Public Hearing 2/19/04	1 page	24
219	Memo from Sid Scrimger dated 2/13/04	1 page	24
220	Correspondence from Thomas Cichy	1 page	24
221	Correspondence from DeAnn Loll	1 page	24
222	Correspondence from Mary Russell	2 pages	24
223	Correspondence from Brian Allen	1 page	24
224	Correspondence from Daniel Behring	2 pages	24
225	Information submitted by Liz Laskey	11 pages	24
226	Correspondence from Little Manistee Watershed Conservation Council	1 page	24

Item #	Description	# Pages	x copied
227	Correspondence from Christopher Bzdok	13 pages	24
228	Correspondence from Diana Riemersma	1 page	24
229	Correspondence from Hope Hogan	1 page	24
230	e-mail from Christine Hnatiw w/attachment	4 pages	24
231	Correspondence from Brett Hamilton	1 page	24
232	Correspondence from Ron Hathaway	1 page	24
233	Correspondence from Cheryl Hathaway	1 page	24
234	Correspondence from Klaus & Lisa Kutschke	1 page	24
235	Correspondence from Kim Hamilton	1 page	24
236	Correspondence from Mike Fatke & Molly Cichy	1 page	24
237	Correspondence from Ruth Niemerowicz	1 page	24
238	Fax from Ian Burns	2 pages	24
239	Fax from Local Physicians (Alan Fark M.D., Paul Antal M.D., Donald Albrecht M.D., Klaus Kutschke M.D., Michael Reines M.D., Michael Barna M.D., John Oliver D.O., Cheryl Dionne M.D., Robert Barry M.D. and Steven Frelier M.D.)	1 page	24
240	Correspondence from Laurie Michel	1 page	24
241	Correspondence from Adolph Krauz	2 pages	24
242	Correspondence from Bruce Monroe & Cynthia Giacobone	2 pages	24
243	Correspondence from Carl Rutske, Manistee County Board of Commissioners	1 page	24
244	Correspondence from Steve Darpel, Mark Schrock & Kim Perrin	2 pages	24
245	Correspondence from Sue Wilson	2 pages	24
246	Correspondence from Robert Wilson	1 page	24
247	Correspondence from Katherine & Gerald Ebbeling	2 pages	24
248	Correspondence from Krystal Johnston, MD	1 page	24
249	Correspondence from Robert Hensel, MD	2 pages	24
250	fax from David & Fran Wallace	1 page	24

Item #	Description	# Pages	x copied
251	List of Postcards received in opposition	4 pages	24
252	<i>Response Letter w/ mailing list</i>	<i>3 pages</i>	<i>34</i>
253	<i>Notice of Meeting location change</i>	<i>2 pages</i>	<i>2</i>
254	Memo dated 2/20/04 RE: Public Hearing Continuance	1 page	24
255	<i>Public Notice Posting - Public Hearing Continuance</i>	<i>1 page</i>	<i>2</i>
256	<i>Ad - Public Notice - Public Hearing Continuance (no affidavit)</i>	<i>1 pages</i>	<i>1</i>
257	<i>Door Signs - Public Hearing Continuance</i>	<i>1 page</i>	<i>6</i>
258	List of Items forwarded to the Planning Commission at the continuation of the Public Hearing 2/26/04	1 page	24
259	Correspondence from Ross Vartian	2 pages	24
260	Correspondence from Gary Bell	1 page	24
261	Correspondence from Evelyn Koller	1 page	24
262	Correspondence from Sara Herberger	1 page	24
263	Correspondence from Daniel Behring w/attachments	8 pages	24
264	Correspondence from Dennis Douglas	1 page	24
265	Correspondence from R. A. Comstock	1 page	24
266	Correspondence from Richard & Linda Albee	1 page	24
267	Correspondence from George & Anne Kaminski	2 pages	24
268	Correspondence from Phillip Carleton, Morton Salt	2 pages	24
269	e-mail from Daniel Behring	2 pages	24
270	Correspondence from Ronald & Sharon Muszynski	2 pages	24
271	Correspondence from Christine Polenciewicz	1 page	24
272	e-mail from Ross Vartian to City Council	3 pages	24
273	e-mail information mailed by Little Manistee Watershed Conservation Council	2 pages	24
274	Correspondence from Mike Beveridge & Kitty Hodge	1 page	24
275	Correspondence from Nan Guzikowski	1 page	24



Item #	Description	# Pages	x copied
276	Correspondence from Luke Guzikowski	1 page	24
277	Correspondence from J. Dwight Poffenberger Jr., Esquire	1 page	24
278	Correspondence from Ted Fairbanks	2 pages	24
279	Correspondence from Gail Tooley	2 pages	24
280	Correspondence from David Smith	2 pages	24
281	Correspondence from William & Elizabeth Hainstock	1 page	24
282	List of Postcards Received in Opposition	3 pages	24
283	Letter from Jon Rose dated 2/23/04 to Richard & Linda Albee	3 pages	24
284	Letter from James A. Ford, Managing Partner, Tondu with Attachment 2/19/04 Presentation	44 pages	5
285	<i>Response letter w/ mailing list 2/26/04</i>	<i>2 pages</i>	<i>20</i>
286	Memo to Planning Commission	1 page	24
287	Agenda for March Meeting	2 pages	200
288	<i>Public Notice Posting (Continuation of Public Hearing)</i>	<i>1 page</i>	<i>3</i>
289	<i>Door Signs</i>	<i>1 page</i>	<i>6</i>
290	<i>Ad for Continuation of Public Hearing w/affidavit</i>	<i>3 pages</i>	<i>1</i>
291	List of Items forwarded to Planning Commission 3/4/05	1 page	24
292	Correspondence from Judith Cunningham	4 pages	24
293	Correspondence from Ed Risdon	2 pages	24
294	Correspondence from Allan & Susan Anderson	1 page	24
295	Correspondence from Shirley Byrd	20 pages	24
296	Correspondence from Patrick & Kimberly Culter	1 page	24
297	Correspondence from Daniel Straubel	1 page	24
298	Correspondence from Dave McIntire, Little Manistee Watershed Conservation Council	2 pages	24
299	Correspondence from Janet Zwiefka	2 pages	24
300	Correspondence from Steve & Nancy Thorp	2 pages	24

Item #	Description	# Pages	x copied
301	Correspondence from Patricia Gillis, Michigan Interfaith Climate and Energy Campaign	2 pages	24
302	Correspondence from Patricia Berghoff	1 page	24
303	Correspondence from Mary Grover, League of Women Voters - Grand Traverse Area	2 pages	24
304	Correspondence from Daniel Behring	2 pages	24
305	Correspondence from Janet Cordes	1 page	24
306	Correspondence from Joyce E. Delamarter	1 page	24
307	List of postcards received in opposition	3 pages	24
<b>308</b>	<b><i>Response Letter w/Mailing List dated 3/5/04</i></b>	<b><i>2 pages</i></b>	<b><i>15</i></b>
309	Record of Public Hearing 2/19/04 concluded 3/4/04	482 pages	26
310	Minutes from 3/4/04 Planning Commission Meeting	2 pages	26
<b>311</b>	<b><i>Copy of Public Notice Worksession 3/11/04, 3/18/04 and 3/25/04</i></b>	<b><i>1 page</i></b>	<b><i>1</i></b>
312	List of items forwarded to Planning Commission 3/11/04	1 page	24
313	Correspondence from Joel & Kathy Smith	2 page	24
314	Correspondence from Francis Ward (Denny) Johnston	1 page	24
315	Correspondence from Carolyn Peters	1 page	24
316	Correspondence from Dick Landback	1 page	24
317	Correspondence from Ron Bauman	2 pages	24
318	Correspondence from Gary Wolfe	2 pages	24
319	e-mail from Charles Dumanois, MD	1 page	24
320	Correspondence from William Rastetter - Olson, Bzdok & Howard	5 pages	24
321	Correspondence from William Rastetter - Olson, Bzdok & Howard	19 pages	24
322	Correspondence from Daniel Behring w/attachments	6 pages	24
323	Correspondence from Michael & Kelly Ignace	1 page	24
324	List of Postcards received in Opposition	2 pages	24
<b>325</b>	<b><i>Response Letter w/ mailing List dated 3/11/04</i></b>	<b><i>2 pages</i></b>	<b><i>13</i></b>

Item #	Description	# Pages	x copied
326	Worksession Agenda (March 11, 2004, March 18, 2004, March 25, 2004)	1 page	150
327	Memo from Jay Kilpatrick 3/10/04 RE: Summary of Key issues Relative to the Proposed Northern Lights Coal-Fueled Power Plant	2 pages	24
328	Memo from Jay Kilpatrick 3/10/04 RE: Special Land Use and Site Plan Review Procedure for Proposed Northern Lights Coal-Fueled Power Plant, Manistee Saltworks Development Corporation	7 pages	24
329	Worksession Notes 3/11/04	2 pages	24
330	Memo from Jon Rose to Planning Commission RE: Questions from 3/11/04 Worksession with attachments	8 pages	24
331	List of items forwarded to Planning Commission 3/18/04	2 pages	24
332	Copy of letter from David C. Hollister, Department of Labor and Economic Growth dated 3/10/04	2 pages	24
333	Memo from Jon Rose dated 3/11/04 RE: Excerpt from Michigan Land Use Institute Article	2 pages	24
334	Memo from Jon Rose dated 3/12/04 RE: Site Plan/Plant Elevation Preliminary Plans	3 pages	24
335	Correspondence from Todd Yapple	1 page	24
336	Correspondence from Bruce Berghoff	1 page	24
337	Correspondence from Frank Fahey	1 page	24
338	Correspondence from Mike Ripley, Chippewa Ottawa Resource Authority	2 pages	24
339	Correspondence from Karl Wagner	1 page	24
340	e-mail from Judy Cunningham	1 page	24
341	e-mail from Gary W. Timm	1 page	24
342	Correspondence from Charles Dumanois, MD	1 page	24
343	fax from Tom Boensch, Michigan State Building and Construction Trades Council	2 pages	24
344	Correspondence from Alfred F. Hegerich	1 page	24
345	Correspondence from Lynise Hensel	2 pages	24

Item #	Description	# Pages	x copied
346	Correspondence from Judy Cunningham	2 pages	24
347	Correspondence from Wayne Frohriep	1 page	24
348	Correspondence from Jim Sluyter	1 page	24
349	Correspondence from Amanda Grace Campbell	1 page	24
350	Correspondence from Wayne Frohriep w/attachment	2 pages	24
351	Correspondence from Michael Reines, MD	1 page	24
352	Correspondence from Richard Shotwell, The Pine River Association	1 page	24
353	Listing of Postcards received in opposition	2 pages	24
354	Memo from Jay Kilpatrick dated 3/16/04 RE: Special Use Permits	1 page	24
355	Information from Press Conference held prior to Council Meeting 3/16/04 Manistee Citizens for Responsible Development - Press release Aurora Association - Press release Article by Keith Schneider - Great Lakes Bulletin News Service Midwest Alliance of Sovereign Tribes Resolution No: 04-03	9 pages	24
356	Items mailed to Planning Commissioners 3/16/04 Memo from Jon Rose dated 3/16/04 Letter from Jim Tondou to Jon Rose dated 3/15/04 Copy of Special Use Permit Application (referenced in letter)	24 pages	24
357	<i>Citizen Response Letters w/mailling list dated 3/18/04</i>	<i>2 pages</i>	<i>12</i>
358	Answers to Questions from 3/11/04 Worksession w/attachments Memo from Fire Chief Sid Scrimger to Jon Rose dated 3/17/04 w/attachments Memo from Brian Sousa to Planning Commission dated 3/18/04 Memo from Jack Garber to Maple Street Bridge & US 31 Bridge dated 8/7/02 w/attachments Response from Mark Tonello, Fisheries Management Biologist, Michigan Department of Natural Resources to letter sent by Jon Rose 3/12/04 Response from John Gretzinger dated 3/18/04 "Fall Area" prepared by Jon Rose 3/17/04 Response from Jim Tondou dated 3/17/04 Memo from Denise Blakeslee to Planning Commissioners dated 3/18/04	21 pages	24
359	Tondou Press Release dated 3/17/04	1page	24

Item #	Description	# Pages	x copied
360	e-mail from Robert Sills, Michigan Dept of Environmental Quality	2 pages	24
361	Memo dated 3/19/04	1 page	24
362	Worksession Notes 3/18/04	3 pages	24
363	Letter from Jon Rose to Jim Tondou dated 3/19/04 (hand delivered)	1 page	24
364	Memo and Mac Tech Report	40 pages	24
365	List of items forwarded to Planning Commission 3/25/04	1 page	24
366	Letter from John Gretzinger dated 3/18/04 RE: Planning Commission Issues	1 page	24
367	Letter from John Gretzinger dated 3/18/04 RE: Environmental Impact of Tondou Application	3 pages	24
368	Testimony of William Brooks	14 pages	24
369	e-mail from Charles O'Brien	1 page	24
370	Correspondence from Daniel Behring	2 pages	24
371	Correspondence from Barbara Bernier	2 pages	24
372	Correspondence from Jim Sluyter	1 page	24
373	Copies of Post Cards in Support submitted by Meagan Kempf 3/23/04	11 pages	24
374	Correspondence from David Kamaloski w/attachments	4 pages	24
375	Correspondence from Kurt Edenburn	1 page	24
376	Correspondence from Douglas R. Jackson	1 page	24
377	Correspondence from Elaine McWatt	2 pages	24
378	e-mail from Meagan Bobier Kempf	2 pages	24
379	Correspondence from Michael Bajtka	2 pages	24
380	Correspondence from Jim Maturen, MI Wild Turkey Hunters Assoc.	2 pages	24
381	Report: Environmental Issues of Concern with Regard to Construction and Operation of the Northern Lights Power Plant; Powell & Associates, Robert Powell	3 pages	24
382	<i>Citizen Response Letter w/ mailing list</i>	<i>2 pages</i>	<i>12</i>

Item #	Description	# Pages	x copied
383	List of Late Submittals handed out to Planning Commission 3/25/04	1	24
384	Letter from Julie Beardslee, City Assessor dated 3/25/04	2	24
385	Letter and Memo from Meagan Kempf dated 3/24/04	3	24
386	Correspondence w/attachment Robert T. Hensel, MD	2	24
387	Handout from MACTEC Consultant <i>Michigan Mercury Electric Utility Workgroup</i>	1	24
388	Memo from Brian Sousa - 3/25/05 Estimated life of proposed haul-route roads	3	24
389	Worksession Notes 3/25/05	3	26
390	Letter from Jon Rose to Jim Tondy dated 3/26/04 requesting extension (hand delivered)	1	24
391	Memo to Planning Commission dated 3/26/04	1	24
392	Agenda for 4/1/04 Planning Commission Meeting	2	200
393	Letter dated 3/25/04 from Jim Tondy with Attachments to Jon Rose included in mailing to Planning Commission 3/26/04	13	2
394	List of submittals hand delivered 3/31/04	1	24
395	Correspondence from Gerard Grabowski	1	24
396	Correspondence from Bill Dean	2	24
397	Correspondence from Shirley Skiera	4	24
398	Correspondence from Peggy Grommons	1	24
399	Correspondence from Catherine Eubanks	1	24
400	Correspondence from Jack Grommons MD	1	24
401	Correspondence from Wilfred Swiecki, Platte Lake Improvement Association	1	24
402	Correspondence from Bruce Baker	1	24
403	Correspondence from Robert Hensel MD	19	24
404	e-mail from Marc Gignac	1	24
405	Correspondence from Ed Cieslinski	2	24

Item #	Description	# Pages	x copied
406	Correspondence from Richard Shotwell, The Pine River Association	1	24
407	Correspondence from Dennis Douglas	1	24
408	Correspondence from Dana Schindler w/attachments	7	24
409	Correspondence from Sara Herberger	2	24
410	Correspondence from Ron Martin	2	24
411	Correspondence from Madeline Klusowski	2	24
412	Letter from William Rastetter (Olson, Bzdok & Howard) dated 3/25/04 and response letter from Jon Rose to Mr. Rastetter dated 3/29/04	2	24
413	Copies of Post Cards in Support submitted by Meagan Kempf 3/31/04	23	24
414	Letter from Rodger Kershner, Howard & Howard to Bruce Gockerman dated 3/19/04	1	24
415	Letter from Jon Rose to Jim Tondu dated 3/26/04 RE: Extension	1	24
416	Fax from Roger L. Myers, Howard & Howard Attorneys, P.C. dated 3/31/04 RE: Extension	3	24
417	Fax from Roger L. Myers, Howard & Howard Attorneys, P.C. dated 3/31/04 RE: Manistee Saltworks Development Corporation w/attached possible conditions (Page 6 & 7) Memo from Jay Kilpatrick to Jon Rose dated 3/20/04	11	24
418	Memo from Jon Rose to Planning Commissioners dated 3/30/04 RE: Conference call with Lansing DEQ	1	24
419	Memo from Jon Rose to Planning Commissioners dated 3/31/04 RE: Record	20	24
420	Memo from Jon Rose to Planning Commissioners dated 3/31/04 RE: Extension	1	24
421	<b><i>Response Letter w/mailling list</i></b>	<b>2</b>	<b>13</b>
422	List of Items forwarded to Planning Commission 4/1/04	1	24
423	Faxed copy of Onekama Township - Resolution concerning Northern Lights Project	1	24
424	Faxed copy of Michigan Townships Association, Manistee County, Chapter - Resolution Concerning Northern Lights Project	1	24

Item #	Description	# Pages	x copied
425	Commentary from Alexander Sagady, Environmental Consultant RE: Air pollution and environmental issues posed by the Northern Lights Project.	16	24
426	Copy of Fax from Roger Myers, Howard & Howard	1	24
427	Memo from Denise Blakeslee dated 4/1/04 RE: Record updated	3	24



Ann Arbor Bloomfield Hills Kalamazoo Lansing Peoria

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March 31, 2004

**VIA FACSIMILE/REGULAR MAIL**

John H. Gretzinger, Esq.  
Nantz, Litowich, Smith & Girard  
2025 E. Beltline Ave. SE, Ste. 600  
Grand Rapids, MI 49546

**RE: Manistee Salt Works Development Corporation ("MSWDC")**

Dear Mr. Gretzinger:

As you know, this firm represents MSWDC in connection with its application for a special use permit for the Northern Lights power plant project. I am writing as follow-up to our recent discussion regarding this matter and to address the report prepared by Williams and Works dated March 10, 2004 regarding the same. Specifically, MSWDC disagrees with certain comments that have been made by City of Manistee officials to the media, and conclusions reached by Mr. Jay Kilpatrick of Williams and Works in the report, regarding the scope of conditions which the City may permissibly attach to the special use permit.

It is important to understand at the outset that we are in agreement with the report's conclusion that a power plant is a use permitted by right under the City's I-2 zoning classification, the district in which the subject property is located. Further, as Williams and Works notes on page 2 of its report, there are only three aspects of the proposed project which require special use approval: (1) Activity outside an enclosed building; (2) discharge of treated process water to Manistee Lake and (3) alteration of the Manistee Lake shoreline. However, in spite of the limited scope of items relating to the project that are subject to special use approval, the Williams and Works report improperly concludes that "it is appropriate for the Planning Commission to consider the entire proposal . . . under the special land use provisions of Article 86." We completely disagree with such conclusion, which is beyond the scope of the City's authority and contrary to Michigan law. This faulty conclusion has mired down and confused deliberation over the special use permit in areas that may well be of valid concern of the community, but have no proper place in any decision to approve or deny the special use permit.

Section 4a of the City and Village Zoning Act (the "Act"), MCL 125.584a, provides the statutory basis upon which the City may regulate certain land uses and activities through a special land use approval process:

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- (1) A city or village may provide in a zoning ordinance for special land uses which shall be permitted in a zoning district only after review and approval by the Commission appointed to formulate and subsequently administer the zoning ordinance, an official charged with administering the ordinance, or the legislative body. The ordinance shall specify the following:
  - (a) The special land uses and activities eligible for approval consideration and the body or official charged with reviewing special land uses and granting approval.
  - (b) The requirements and standards upon which decisions on requests for special land use approval shall be based.
  - (c) The procedures and supporting material required for application, review, and approval. [MCL 125.584a(1) (emphasis added)].

The scope of the City's authority to attach conditions to a special land use approval are set forth in section 4c of the Act, which provides, in pertinent part:

- (1) If a city or village zoning ordinance authorizes the consideration and approval of special land uses or planned unit developments pursuant to Sections 4a or 4b, or otherwise provides for discretionary decisions, the requirements upon which the decisions are made shall be specified in the ordinance.  

\* \* \*
- (2) Reasonable conditions may be required in conjunction with the approval of a special land use, planned unit development, or other land uses or activities permitted by discretionary decision. . . . Conditions imposed shall do all of the following:

\* \* \*

- (b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
- (c) Be necessary to meet the intent and purpose of the zoning regulations; be related to the standards established in the ordinance for the land use or activity under consideration; and be necessary to assure compliance with those standards. [MCL 125.584c (emphasis added)].

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The only sensible meaning of these provisions is that the planning commission may attach to the permit such reasonable conditions as it finds are appropriate to address only those characteristics of the proposed use that are not shared with a use that is permitted by right, such as a power plant which is fully enclosed, not discharging treated water to the lake and not altering the lake shoreline, for which the owner is entitled to use the property without any special use conditions as a matter of law. Any other interpretation of the Act would permit the imposition of any condition for all land uses, regardless of whether the condition restricted uses permitted by right. Such an interpretation would be tantamount to repealing the zoning ordinance and conferring complete discretion over all land use on the planning commission. The Act certainly does not authorize such a result.

Contrary to Williams and Works' conclusion that the entire project is subject to special land use provisions of the City's ordinance, a power plant is unambiguously allowed as a permitted use within the I-2 district. Although the project includes three elements identified in the ordinance as subject to special use approval, conspicuously absent from the ordinance are any specific requirements or standards upon which the City could attempt to regulate all other aspects of the power plant through a special land use approval process. Thus, any conditions to the special use permit must "be related to the standards established in the ordinance for [the three components] under consideration." MCL 125.584c(2)(c).

The suggestion that the City may attach conditions that are unrelated to the three characteristics of the proposed project which give rise to special use consideration is unquestionably contrary to section 4c of the Act. Thus, by way of illustration only, mandating an "acceptable" community service fee, regulating air quality standards, and imposing site remediation criteria are clearly beyond the scope of the City's authority under the Act. The fact that MSWDC's proposal includes outside storage of coal does not grant the City a license to arbitrarily regulate other elements of the project over which the City has no authority.

Similarly, although the City's ordinance identifies the discharge of treated process water to Manistee Lake as an activity subject to special use approval, the City cannot lawfully exclude an on-site wastewater treatment plant, regulate the discharge limits of such a private plant, or mandate that MSWDC contribute millions of dollars to the City to increase the capacity of its plant. As the Michigan Court of Appeals recently confirmed in *Lake Isabella Development, Inc. v. Dep't of Environmental Quality* and *City of Brighton v. Twp of Hamburg*, such regulation by local governments are unconstitutional and preempted by the Natural Resources and Environmental Protection Act (NREPA), MCL 324.101, *et seq.* Indeed, the Williams and Works report acknowledges the applicability of the *City of Brighton* decision on page 4.

MSWDC also disagrees with the advice on page 5 of the Williams and Works report that the Planning Commission consider the impact on properties beyond those that share a common boundary with the project in determining compatibility with adjacent land uses under section 8604(3) of the ordinance. The report recognizes that in land use planning, "adjacent land uses are contiguous, sharing a common boundary." Despite that accepted limitation on the scope of adjacent

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uses to be considered, it then erroneously suggests the Planning Commission "broaden the scope of consideration somewhat." Williams and Works' suggestion that the City deviate from the accepted limitation on "adjacent land uses" to be considered (without even attempting to define the scope of "somewhat") represents nothing more than an invitation to impose arbitrary conditions in the absence of specific standards, contrary to MCL 125.584c(2)(c). Thus, any attempt to condition special use approval on an acceptable community service fee because of the perceived impacts to the community at large constitutes a clear violation of the limited statutory authority possessed by the City under the Act.

Williams and Works, at the conclusion of its report, identifies several proposed restrictions for consideration by the planning commission as conditions to the issuance of a special use permit. Based upon the analysis set forth above, MSWDC objects to many of the conditions suggested in the report because they exceed the scope of the City's authority under sections 4a and 4c of the Act. However, while certain other conditions proposed in the report exceed the scope of the City's authority, MSWDC does not object to such conditions to the extent they are reasonable as clarified herein. The following represents the list of specific conditions proposed by Williams and Works and MSWDC's response to the same:

- a. Submission of final engineered site plan appropriately addressing elements such as, but not limited to, site lighting, landscaping (including maintenance), on-site circulation, appropriate fire separation distances, and other site-related issues.

MSWDC response:

No objection.

- b. Approved NPDES permit for discharge of process water and disclosure of discharge limits, unless the City determines that discharge of process water to the municipal wastewater system is in the best interest of the community.

MSWDC response:

To the extent an NPDES permit is required for the development and operation of the project, MSWDC will secure approval of such permit. To the extent this condition suggests that the City may prohibit an on-site waste water treatment plant, MSWDC objects to such condition as beyond the scope of the City's legal authority.

- c. Fuel source limited to low-sulfur coal only from the Power River basin or another source of low sulfur coal.

MSWDC response:

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Although this condition is beyond the scope of the City's legal authority, MSWDC does not object to this condition if restated as follows: "Fuel limited to low-sulfur coal only from the Powder River Basin or another source of low sulfur coal as more fully defined in the air quality permit issued to the facility".

- d. Per applicant's assertion, mercury removal systems to incorporate maximum achievable control technology.

MSWDC response:

Although this condition is beyond the scope of the City's legal authority, MSWDC does not object to this condition if restated as follows: "Per applicant's assertion, mercury removal systems to incorporate maximum achievable control technology, as defined in the air quality permit issued to the facility".

- e. Approved MDEQ and EPA air emission permit and disclosure of emission limits.

MSWDC response:

No objection.

- f. Copy of an approved Army Corps of Engineers permit and MDEQ permit for shoreline improvements and disclosure of the permits particulars.

MSWDC response:

No objection. This is a reasonable condition to regulate the alteration of the Manistee Lake Shoreline.

- g. Submission of a MDEQ-approved site remediation plan including all site clean-up standards as established by the City and MDEQ.

MSWDC response:

MSWDC will secure approval of a site remediation plan in accordance with standards established by the MDEQ, but MSWDC objects to the proposed obligation to secure approval of such plans in accordance with standards established by the City, which exceeds the scope of the City's legal authority and usurps the authority of the state.

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- h. Executed agreement or other documentation committing to pay a community service fee in an amount acceptable to the City, the terms of which shall include agreement to provide the City with copies of the annual audited financial statements.

MSWDC response:

MSWDC objects to this condition because it is beyond the scope of the City's legal authority.

- i. Agreement to provide the City with copies of periodic air and water quality monitoring reports that may be required under any permits issued.

MSWDC response:

MSWDC objects to this condition because it is beyond the scope of the City's legal authority. In addition, the City is entitled to secure this information from the regulating agencies under applicable Freedom of Information Acts.

- j. Install groundwater monitoring wells to acquire baseline contaminate information and provide quarterly monitoring of groundwater quality to the City.

MSWDC response:

MSWDC objects to this condition because it is beyond the scope of the City's legal authority. However, MSWDC shall install groundwater monitoring wells to the extent they are required by EPA and/or MDEQ.

- k. Noise levels to be maintained below 65 decibels at the property line and applicant to provide the City with a sound meter for monitoring purposes.

MSWDC response:

MSWDC does not object to maintaining plant equipment noise levels below 65 decibels at the property line. However, MSWDC objects to an obligation to provide the City with a sound meter for monitoring purposes. The City is entitled to conduct its own periodic sound testing to monitor compliance with this standard.

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- l. Establishment of a Performance Bond to the benefit of the City to assure either satisfactory completion of the facility in accord with the requirements of all permits, the special land use permit and the site plan, or in the event the construction is abandoned prior to completion, removal of existing and any new structures or parts of structures and complete reclamation of the site in accord with an approved remediation plan.

MSWDC response:

MSWDC objects to this condition because it is beyond the scope of the City's legal authority.

- m. Establishment of an escrow bond or other surety satisfactory to the City to support the ultimate decommissioning of the facility and the reclamation of the site in accord with the then existing City of Manistee Master Plan.

MSWDC response:

MSWDC objects to this condition because it is beyond the scope of the City's legal authority.

- n. All coal conveyors to include dust mitigation and fire suppression systems, including the self-unloading equipment on the freighters.

MSWDC response:

This is a reasonable condition to regulate activity outside an enclosed building insofar as it regulates the plant and its activities. MSWDC is also able and willing to insist that the boats delivering coal to the plant are equipped with covered unloading conveyors and to provide dust suppression and fire control equipment at the point of delivery of the coal.

- o. Final approval of the fire suppression system by the City Fire Chief and fulfilling of the training and equipment requirements associated with the establishment of the plan, as outlined by the City Fire Chief.

MSWDC response:

The scope of this proposed condition is unclear. However, to the extent this condition requires final approval by the City's Fire Chief of the fire suppression systems referenced in condition n above and compliance by the power plant with all of the state's fire codes, MSWDC has no objection to

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this condition. To the extent this condition proposes to obligate MSWDC to provide funding, training, and/or equipment to the City's fire department, MSWDC objects to such condition because it is beyond the scope of the City's legal authority and, therefore, no lawful control.

- p. All coal freighters shall be prohibited from discharging ballast water in the Manistee River Channel or in Manistee Lake.

MSWDC response:

MSWDC objects to this condition because it is beyond the scope of the City's legal authority. The extent to which coal freighters may discharge ballast water is regulated by the United States Coast Guard, over which the City possesses no regulatory authority.

- q. The applicant shall agree to pay all bridge opening fees necessitated by its operation.

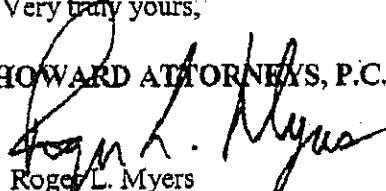
MSDWC response:

MSWDC objects to this condition because it is beyond the scope of the City's legal authority. In addition, even if this item were subject to regulation under the special use approval standards, the City's attempt to impose operating fees against MSWDC while not similarly assessing all other watercraft that necessitate bridge openings would constitute unlawful discrimination.

I trust that the foregoing information clearly delineates the extent to which the City may attach permissible conditions to the special use permit sought by MSWDC. Should you have any questions or need additional information, please do not hesitate to contact me. We would welcome the opportunity to review and discuss with you any special conditions the planning commission appears prepared to adopt prior to formal action by the commission in an effort to avoid any misunderstanding about the state of the facts, the law or the intentions of either party.

Very truly yours,

HOWARD & HOWARD ATTORNEYS, P.C.

  
Roger L. Myers

RLM:cjh

cc: City of Manistee Planning Commission (via facsimile only 231.723.1546)

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**Howard & Howard**



April 1, 2004

Most area residents support industrial growth. However new industry must meet zoning ordinance requirements. The proposed Northern Lights plant does not.

Three short examples:

First, the City's consultant has said that the plants air pollution control equipment would not be adequate if Manistee is a non-attainment area. Air quality monitoring equipment in Mason and Benzie counties show them to be non-attainment areas. Although we do not have monitoring equipment Manistee is probably also a non-attainment area. Therefore, the plant design does not provide adequate protection of public health and safety.

Second, the large number of additional bridge openings for freighter traffic would increase the odds that emergency vehicles would be delayed with a negative impact on public health and safety.

Third, additional heavy truck traffic, cooling tower vapors, noise, dust, odors, etc., associated with the plant would not be compatible with the surrounding neighborhood.

There are other reasons for the City to deny the application, however the above examples are clear zoning ordinance violations that can not be ignored.

Good planning will improve the quality of life and the environment of our community. Those improvements will attract investors and industrial developers with good jobs and clean facilities. In addition to industrial developers a high quality of life attracts other people and businesses that contribute to a thriving community.

With its many negatives the Northern Lights project would be a detriment to our future.

*Ruane Marguard*  
*Manistee, M.I.*

